

# CHILDHOOD VULNERABILITIES

in South Africa

Some Ethical Perspectives



J. Grobbelaar & C. Jones (Eds)

## CHAPTER 7

### RECOGNISING AND RESPONDING TO COMPLEX DILEMMAS: CHILD MARRIAGE IN SOUTH AFRICA

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## CHILDHOOD VULNERABILITIES IN SOUTH AFRICA: SOME ETHICAL PERSPECTIVES

## INTRODUCTION

In a June 2019 exposé on child marriage in South Africa, the investigative journalism television show *Carte Blanche* drew renewed attention to the more than 90 000 girls in South Africa who entered marriages as child brides. The show focused on a “polluted *ukuthwala*” as a major driver of child marriage, unpacking how traditional cultural practices have become warped to the extent that it leads to young girls being forced to marry older men against their will (Forced child marriages 2019). Nevertheless, South Africa remains a country with one of the lowest rates of child marriage in Africa. Compared to countries, such as Niger, where 76% of women aged 20-24 years were first married or in a union before they were 18 years old, and the Central African Republic, where it is 68% of girls, South Africa’s rates are low: the last available data, collected in 2003, showed that only 6% of girls in South Africa are married before the age of 18 years (Institut National de la Statistique 2013; ICASEES 2010; Department of Health 2007).

However, these statistics paint a misleading picture of the fate of thousands of girl children<sup>1</sup> in South Africa. This chapter will briefly unpack the nature, drivers and consequences of child marriage, followed by a focus on South African legislation and cultural practices relevant to child marriage. This is a prelude to an in-depth discussion of three key dilemmas relating to the phenomenon, namely the inadequacy of a legislative response, the clash between the primacy of human rights versus cultural rights, and the reality of transactional intergenerational sex in relationships other than marriages. Recognition of these dilemmas leads to acknowledgement that current responses to child marriage are not merely woefully inadequate, but also fail to grasp the full scale of the problem.

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1 While young boys can also enter into a child marriage, the overwhelming majority of children in such marriages are female. This is also the case in South Africa. Therefore, this chapter will focus on girls as victims and survivors of child marriage.



## WHAT IS CHILD MARRIAGE?

As defined in Article 1 of the United Nations Convention on the Rights of the Child, as well as Article 2 of the African Children's Charter, a child is a person – boy or girl – under the age of 18 years (Centre for Human Rights (CHR) 2018:15). Child marriage is, therefore, where one (or both) of the parties involved in the union is (or was) a child when the marriage occurs. While both boys and girls can be involved in a child marriage, the overwhelming majority of child marriages involve a girl child marrying an older man (2018:25).

While the term 'child marriage' is often used interchangeably with 'forced marriage' or 'early marriage', these are not the same. While a child marriage may be a forced marriage, in as far as either or both parties involved in the marriage did not personally give free and full consent to the marriage, a forced marriage can also occur between adult parties. For example, this happens when a widow is forced to marry a relative of her deceased husband. Early marriage, on the other hand, is a term used to refer to marriages that occur involving an individual younger than 18 years in a country where adulthood is obtained at an age younger than 18 years or upon marriage. It can also refer to marriages where the spouses are 18 years or older, but they are not ready or able to consent to marriage, for example because of a lack of physical development (United Nations Human Rights Council 2014:3).

Child marriage rates are difficult to accurately determine, as birth registration, as well as marriage registration are lacking or inadequate in many settings. In many countries, there are no official records of child marriages, or inadequate birth registration systems make it hard to determine the age of the spouses. Nevertheless, it is clear that the prevalence of child marriages in Africa is higher than the global average and that it occurs most often in West and Central Africa (CHR 2018:19-20).

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2 In further references to this resource, the abbreviation CHR will be used.

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The various drivers of child marriage are interrelated and often mutually reinforcing, and a cause of child marriage can at the same time also be a consequence of child marriage. This is illustrated when reflecting on poverty and education as drivers of child marriage. Child marriage is linked to poverty and child marriage tends to be more common in poorer countries and in the poorest parts of a specific country (CHR 2018:30). Girls marry at a young age (or are forced to marry young by their guardians) based on the belief that the marriage will improve their and their family's material welfare (Mudarikwa, Roos & Mathibela 2018:7). However, girls that marry young often leave school early. Their lack of education can, in turn, lead to increased poverty, as they are unable to find employment. Furthermore, as education empowers girls and reduces their vulnerability to child marriage, lack of education is a driver of child marriage (CHR 2018:32).

There are seven key drivers of child marriage on the African continent (CHR 2018). The first is gender inequality, with the belief in the inferior status of women and girls present and common across the continent. Second, certain cultural and religious norms directly or indirectly promote child marriage. Poverty and lack of access to education for girls are the third and fourth major drivers of child marriage. Fifth is legal systems that allow for child marriage and this driver is usually present in countries with plural legal systems. The sixth driver is the inadequacy of the systems that ensure registration of births and marriages. It contributes to an inability to curb the practice, in as far as it allows child marriage to be performed without legal consequences. Lastly, on a continent where armed conflict is rife, the instability that results from conflict, and particularly the fear of sexual violence, act as a driver of child marriage.

The consequences of child marriage are far-reaching. Poorer health outcomes, lower levels of education, higher risk of violence and abuse, and persistent poverty are common challenges that married children face. Girls who marry young are particularly at risk for negative sexual and reproductive health consequences, linked to the common expectation that they become pregnant immediately or soon after marriage. The complications linked to pregnancy and childbirth

are a major cause of death amongst 15-19 years olds in developing countries (Svanemyr et al. 2013:9). The children of mothers who marry young are (amongst other things) also at increased risk of malnutrition, stunting and death (Mudurikwa et al. 2018:10). The consequences of child marriage are not limited to those involved in the union. It impacts the broader community and country. Girls who marry young have dramatically higher fertility rates, meaning child marriage impacts population growth. This, in turn, affects the welfare of the community and country more widely. Recent studies have calculated the financial gains of ending child marriage, finding that “(g)lobally (for 106 countries) the welfare benefits that would be reaped through lower population growth from ending child marriage reach \$566 billion per year in 2030” (Wodon et al. 2017:39).

Recognising the harms done by child marriage at an individual, community and national level, the international community has drafted and accepted several high-profile conventions forbidding child marriage. Two such international agreements are of particular relevance to child marriage in Africa, namely the 1989 United Nations Convention on the Rights of the Child (CRC) and the 1990 African Charter on the Rights and Welfare of the Child (ACRWC). The CRC does not explicitly refer to child marriage, although it describes several child rights that are violated by the practice. The ACRWC, however, has specific requirements on child marriage, including that all signatories have to take steps to end the practice, set the minimum age of marriage as 18 years, and make registration of all marriages compulsory (Maswikwa et al. 2015:58). In principle, the signatories, which includes South Africa, are legally bound to these agreements. In practice, however, many African countries have not abided by these stipulations. This includes South Africa, as the next section will explore.

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The South African Constitution states that international law should be considered when interpreting the rights contained in the South African Bill of Rights. This would include the CRC and ACRW as discussed above, but also agreements like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Universal Declaration of Human Rights, the Protocol on the Rights of Women in Africa, and the Southern African Development Community (SADC) Protocol on Gender and Development. All these agreements (to which South Africa is signatory) directly or indirectly prohibit child marriage. However, with many of these conventions there are loopholes that allow child marriage to legally continue. These loopholes are often in relation to the age of marriage. For example, the SADC Protocol on Gender and Development states that ‘no person under the age of 18 shall marry, *unless otherwise specified in law...*’ (emphasis added), while CEDAW states that a minimum age of marriage should be determined, but does not state what that age should be (Mudarikwa et al. 2018: 18-21).

South African legislation is unable to address child marriage, because its legislation has embraced these loopholes. Different laws set different requirements for marriages. Almost all of these laws allow those younger than 18 years to enter into marriage. For example, the Marriages Act sets different minimum ages for boys and girls: girls can be married at 15 years, while the minimum age for boys is 18 years. The Act also allows for parents, guardians, a Commissioner of Child Welfare, or a judge of the Supreme Court to provide permission should one of the spouses be younger than the required number of years (Mudarikwa et al. 2018:23-24). The Recognition of Customary Marriages Act also allows for parents, guardians, a Commissioner of Child Welfare, or a Court to provide consent for marriage, should one of the spouses be too young to provide consent. If both spouses are younger than 18 years, the Minister of Home Affairs can provide permission for the marriage to proceed (Muradikwa et al. 2018:

23-24). The Civil Unions Act, which regulates same and heterosexual unions, is actually the only South African law that sets 18 years as the minimum age of marriage for both boys and girls, and does not grant any exceptions (Mudarikwa et al. 2018:24).

Despite this lack of legislative will to eradicate child marriage, South Africa actually has relatively low child marriage rates compared to the rest of Africa. As stated earlier, an estimated 6% of girls get married while younger than 18 years, and 1% of girls while younger than 15 years (Department of Health 2007). However, these statistics arguably do not tell the real story. Various factors and practices contribute to a situation where the country's child marriage rates are arguably much higher than reported. First, there is no minimum age of marriage in the context of religious marriages, for these marriages are not recognised as valid under South African law. Only once they are registered in compliance with the Marriage Act, are they recognised. Furthermore, not all customary marriages are officially registered. The country's child marriage rates are, therefore, most likely higher than reported (Mudarikwa et al. 2018:6).

Second, two specifically South African cultural practices have been linked to child marriage, but are also not well documented, resulting in reported child marriage rates arguably being inaccurate (Mudarikwa et al. 2018:16). The first of these practices is *ukuthwala*. This practice originated with the Xhosa-speaking tribes and has expanded to other ethnic groups. *Ukuthwala* is a cultural practice of abduction, where a woman is forcibly taken by a young man to his home. This abduction is seen as a preliminary step to customary marriage. In older forms of this tradition, the practice was merely a ritual, as the girl and her abductor were of a similar age and in a consensual relationship but have not been able to secure her family's approval for their union (CHR 2018:28). However, under the banner of *ukuthwala* is now included practices, such as young girls being married to older men, a family member (of the girl) kidnapping her and taking her as wife, and abductions not being reported to the traditional authorities (Mwambene & Sloth-Nielsen 2011:2). Rarely are these practices,



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while resulting in underaged girls entering marriages, being recorded as child marriages.

The second practice is *ukuganisela*. With this practice, a girl's parents start marital negotiations with a boy's parents. This practice in itself violates conventions protecting the rights of the child, as marriage negotiations are done and consent is given on behalf of a child. However, the practice has metamorphosed into even more harmful forms. In modern formats, girls' parents negotiate marriages with much older men, already receiving *lobola* from him and consenting to the marriage on her behalf (Mudarikwa et al. 2018:14). While *ukuganisela* is, therefore, not an actual marriage, it can be the prelude to child marriage.

A last factor to take into account, is that South Africa is experiencing an influx of refugees, migrants and illegal immigrants from other African countries. While South Africa itself may not have high child marriage rates (although, as discussed, the validity of these statistics can be contested), there are an increasing number of people living in South Africa who come from countries where child marriage is an accepted and acceptable practice. This offers an added challenge to South Africa's attempts to eradicate the practice, for many of these individuals are undocumented and do not perform or register marriages through South African traditional or civil authorities.

## DILEMMAS IN ADDRESSING CHILD MARRIAGE IN SOUTH AFRICA

The preceding overview of child marriage has already highlighted several challenges in addressing the issue globally, in Africa, and in South Africa specifically. This section will reflect on three particular dilemmas in responding to child marriage, namely the inadequacy of a legislative response, the clash between the primacy of human rights versus cultural rights, and the reality of transactional intergenerational sex in relationships other than marriages. Reflection on these dilemmas

highlights the critical need for a much more comprehensive, holistic response to child marriage.

## INADEQUACY OF LEGISLATIVE RESPONSE

The majority of African countries outlaw child marriage, yet the practice is still very common. Why is this? First, not all of the countries that criminalise it have the same minimum age for marriage, some have discriminatory minimum ages, or a minimum age lower than 18 years. Furthermore, the penalties for child marriage vary, ranging from small fines to 10 years' imprisonment. A number of countries, including South Africa, ban or invalidate marriages that are below the minimum age, while some prescribe a minimum age but do not criminalise or ban the practice (Svanemyr et al. 2013:12; Maswikwa et al. 2015:66). Thus, an inadequate legislative response is partly to blame for the continuation of the practice.

However, inadequate legislation is not the only challenge. The actual implementation and enforcement of existing laws are rarely adequate (CHR 2018:61). Across Africa, including South Africa, the judicial systems are weak, with a poor understanding of relevant laws and their implementation in terms of child marriage (Svanemyr et al. 2013:19). Furthermore, child marriage most often occurs under customary or religious law. While statutory law may prohibit or criminalise the practice, customary or religious laws often allow for it. It is then traditional or religious authorities that are informed of such marriages and disputes around it, not state authorities (CHR 2018:56). In such cases (CHR 2018)

... the authorities charged with adjudicating the case may support the practice of child marriage, and may even have been involved in deciding that the marriage at issue would take place. Even in the state justice system, judges in many jurisdictions are in support of customs that condone child marriage and so will not apply criminal sanctions if cases appear in court. (p. 57)

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The result is that there are few prosecutions of child marriage perpetrators (Svanemyr et al. 2013:19). At least part of the problem is that many of those responsible for interpreting and enforcing legislation believe that child marriage is a private practice outside the purview of the law, or do not believe that child marriage is wrong. For example, a South African High Court judge has publicly argued for the validity of child marriages conducted according to the *ukuthwala* custom (CHR 2018:57, 61).

In any case, as discussed in the previous section, South Africa has a number of contradictory laws pertaining to child marriage. Criminalisation of child marriage is doomed to failure if legislation continues to allow for conditions where those younger than 18 years can marry (Maswikwa et al. 2015:58). Furthermore, as is also the case with practices like female genital mutilation/cutting, criminalising child marriage can lead not to its eradication, but to it going underground. Marriage ceremonies are then, for example, conducted at night, or marriages are only registered once the girl has reached 18 years (Svanemyr et al. 2013:20).

A major narrative present within child marriage prevention, is that the right legislation that is adequately enforced will end the practice. With such a punitive approach, the belief is that jail sentences and similar punitive measures will ensure that parents/guardians will no longer consent to such marriages, adult men will no longer marry younger girls, and traditional or religious leaders will no longer perform such marriages. Thus, many of the countries with the highest child marriage rates have prioritised passing laws that ban the practice and have put effort into strengthening and enforcing these laws. However, there is little evidence that implementation and enforcement of laws actually curb the practice. In a comparative assessment of 10 African countries, Svanemyr et al. (2013) found little correlation between the strength of child marriage legislation and prevalence or incidence trends. Where they did find declining rates, they could not ascribe it to legal reforms or mechanisms (:18). While other studies (e.g. Maswikwa et al. 2015) have found some evidence that consistent laws against child marriage can lessen child marriage prevalence, these also

only argue that marriage laws of 18 years and older may prevent child marriages. It is stated by the CHR (2018) that

(l)aws that prohibit child marriage are necessary but not sufficient to eliminate the practice in reality. In most of the countries studied, the introduction of new statutory legal sanctions and remedies determined by courts has in fact gone alongside increasing prevalence of the practice. (p. 56)

While this absence of the impact of legislation could be explained by the fact that many of these laws are recent and have not had the time to impact the practice, Svanemyr et al. (2013:19) argue that there is no reason to believe that the duration of a law will make a difference. They cite India as an example. While India was in 1929 the first country to ban child marriage, 47% of girls in India still marry before the age of 18.

This does not mean that laws and legislation around child marriage have no purpose. On the contrary, they are an important component of a holistic response. Laws let a government clarify its position, it can become a resource and motivation in communities that want to end the practice, and can be a driver and source of legitimacy for activists bent on ending the practice. Laws create an enabling environment (Svanemyr et al. 2013:19) – but they cannot be the sum total of the response to child marriage. The inability of laws to deal adequately with child marriage and ensure its eradication, highlights the importance of a holistic response to the practice. In order to end child marriage, one will have to also engage with the various drivers of the practice, including societal norms and beliefs, poverty, and lack of education.

## HUMAN RIGHTS VERSUS CULTURAL RIGHTS

Much of the defence of child marriage has framed it as a culturally or religiously-mandated practice, that people of the specific culture or religion have a right to perform. This is a particularly challenging

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defence, due to not only the sensitivities around culture and religion, but also legal safeguards to protect cultural and religious freedom. How then, does one engage when religion or culture condones child marriage? This dilemma is exemplified in the South African controversy surrounding *ukuthwala*.

The original aim of *ukuthwala* was to enable a couple of similar age and in a consensual relationship to enter into marriage negotiations. There are different reasons for engaging in *ukuthwala*: it is a way for a couple to force the woman's father to consent to the marriage; to avoid the expense of a wedding; to speed up the marriage process if the woman is pregnant; to show the seriousness of the suitor; or to avoid immediately paying *lobola* if the suitor and his family cannot afford it. According to custom, the man must not have sex with the woman while she is kept in his home. If the man does not offer marriage, or if the offer is refused by the woman's family, a fine is paid by the man to the woman's family (Mwambene & Sloth-Nielsen 2011:3-5).

While *ukuthwala* can play an important role in communities that live according to cultural norms, the reality is that the practice has often been abused. Unmarried women or girls can be *thwala'd* without their consent, and girls can be *thwala'd* while younger than 18 years. Girls can be taken to the young man's home without her consent, and in some cases she is raped, or threatened with rape or violence, to ensure that she and her family agree to the relationship (Mwambene & Sloth-Nielsen 2011:5-7).

The South African Constitution expressly recognises the right to practice one's culture. This right allows members of the culture to engage in cultural practices without intervention from the state or other actors (Devenish 1999). Those defending the practice of *ukuthwala* thus call on this right to argue that neither the state or other actors are allowed to prohibit it or interfere with its implementation (Mwambene & Sloth-Nielsen 2011:11). However, cultural rights do not trump human rights. Both international law and South African law recognise that cultural rights should not be protected at the expense of human rights. CEDAW, the CRC, the African Children's Charter, and the African Women's Protocol, for example, all categorically state that



culture and traditional practices cannot continue if it violates the basic human rights of children and women. The South African Constitution states that the exercising of cultural rights may not be inconsistent with the provisions of the South African Bill of Rights (Mwambene & Sloth-Nielsen 2011:11-12).

Based on the primacy of human rights, there are calls to outlaw practices such as *ukuthwala*, based on the argument that the practice has led to situations where girls are abducted, raped, and/or forced into marriage, thus violating their constitutional rights (Mudarikwa et al. 2018:36). However, certain commentators have asked for more circumspect navigation of the practice, for not all forms of *ukuthwala* involve child marriage and the violation of human rights. In this regard, Mwambene and Sloth-Nielsen (2011) stated:

Thus, it may be necessary to distinguish between the practice of *ukuthwala* in forms which are inimical to human rights and may lead to human rights abuses, and those dimensions of the practice that advantage human rights, and promote the right to culture. (p. 13)

In arguing for the continued recognition of certain forms of *ukuthwala*, Mwambene and Sloth-Nielsen (2011) identify three original forms of *ukuthwala*. With the first, the woman is aware of the intended abduction, approves of it and has given consent. This is, in many ways, similar to an elopement and the act of abduction is only for appearances. Where the woman's father has disapproved of her suitor, *ukuthwala* can thus be an act of agency for the woman, as she is forcing her father to enter into marriage negotiations. With the second form of *ukuthwala*, the families have agreed on the union, but the woman is unaware of the agreement. *Ukuthwala* is then done as she might otherwise not agree to the marriage. Thus, the concept of the bride consenting to *ukuthwala* here is difficult to argue. The third form of *ukuthwala* is against the will of the bride and her family. There is not initial consent from either the woman or her parents, and she is taken to the home of the man by force. Rape, or the threat of rape,

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is used to ensure that the marriage proceeds (:6-7). While it is clear, then, that there are aspects of some of the forms of *ukuthwala* that clearly violate women's and children's rights, there are also aspects that do not do so. Mwambene and Sloth-Nielsen (2011:7) argue that the challenge is to address the objectionable aspects, without losing the culturally beneficial aspects. However, with *ukuthwala* increasingly being used to facilitate and justify highly objectionable unions, for example between much older men with young girls, or between young girls and a relative, it becomes harder to argue in its defence. Yet it is hard to legally counter such underaged forms of *ukuthwala*. First, as discussed earlier, the various relevant South African laws offer different standards by which to adjudicate what underaged marriage is. Second, *ukuthwala* is actually not a marriage, but a process of marriage negotiations. Therefore, South African laws pertaining to marriage do not apply and the practice then cannot be addressed through existing legal prohibitions on, for example, underaged marriage. In no South African law is *ukuthwala* specifically outlawed, therefore, responding to it legally will always require applying different (sometimes contradictory) laws that do not fully apply to the reality and complexity of the practice. The current legal terminology, such as that used in the South African Children's Act, is not sufficiently nuanced to either describe or regulate it (:20-22).

At the same time, as argued earlier, relying on the development of adequate and appropriate laws will arguably not be enough. Dealing with the harmful formats of *ukuthwala* that facilitate child marriage will require a much more nuanced engagement. Why, in the first place, are parents and family members forcing girls into marriages with older men? Why is this seen as acceptable behaviour by a caregiver? This again points to the need to address underlying gender and social norms, not only regarding masculinity, femininity and gender equality, but also regarding parenting and caregiving. Furthermore, with the automatic and natural defensiveness that people feel when there are attempts to change or eradicate their cultural practices, there is a genuine risk of these practices merely going underground, or even becoming more

common as people see it as a way to support and strengthen their culture and cultural rights.

## IS IT LESS HARMFUL IF IT IS NOT A MARRIAGE?

Cross-generational or age-disparate relationships are ones where there is a marked age difference between the two partners, in most cases the man being older than the woman. Transactional sexual relationships have been noted as an issue of concern, not only in relation to HIV & AIDS, but also gender-based violence. A number of studies have noted how such relationships, especially when linked to unequal power, play a significant role in unsafe, unequal and coercive sexual practices (Potgieter et al. 2012:193; Shefer & Strebel 2012:58). The term 'transactional sex' refers not only to traditional sex work, and is not only a result of poverty, but is also driven by societal pressures to acquire material goods and social status. Contextualised conceptions of love, gender and exchange can also play a role (Potgieter et al. 2012:193).

The literature on transactional sex has noted how the inequality within such relationships exacerbate women's vulnerability and puts them at risk (Shefer & Strebel 2012:58). This is the first dilemma to be raised here. While the vulnerability and risk of girls caught in child marriage is responded to within international, regional and national legislation and policies, as well as concerted effort by various organisations and networks bent on eradicating the practice, where is the response to *unmarried* girls in similar unequal and at-risk positions? It can be argued that in many communities and cultures a married girl at least has some recognition, status and authority as a married woman. Unmarried girls known to be in sexual relationships are, on the other hand, often stigmatised not only by the community but even by their sexual partners. See, for example, Potgieter et al.'s (2012) findings on the attitudes towards young girls who engage in sexual relationships with older mini-bus taxi-drivers in exchange for gifts and money. In this study done in the Western Cape, South Africa, the majority of the taxi drivers stigmatised the girls (:195).

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Furthermore, recent research increasingly problematise the simplistic understanding of young girls *only* as victims that passively engage in such relationships out of need, and as older men *only* as perpetrators engaging actively in such relationships for sex. Men are under considerable pressure to take multiple sexual partners in order to prove their sexual prowess. There is also a very dominant narrative that successful masculinity can only be achieved through being a provider (the ‘man as breadwinner’ discourse). When engaging with these narratives and the cultural and social pressures it places upon men, it complicates the simplistic understanding of older men as simply (and only) perpetrators (Shefer & Strebel 2012:59-60). Also, some young girls actively seek out such relationships, as a way to acquire the popular material goods that they desire, or for the social status they receive by being in a relationship with the particular man. This introduces a broader notion of exchange, highlighting that such relationships are not automatically exploitative (Shefer & Strebel 2012:58-59). Brouard and Crewe (2012:49), by emphasising that all relationships (including marriage) “are transactional in one way or another”, show that a transactional relationship is not necessarily an exploitative relationship. It is the context of the relationship that determines whether it is exploitative, and therefore, careful attention must be paid to the social and economic context.

Interrogating the simple victim/perpetrator binary of intergenerational, transactional sex allows us to identify the core beliefs underlying transactional intergenerational sex. Contextualised forms of patriarchy are creating the context in which men are privileged and materially empowered, expected and expecting to be sexually prolific and to provide materially. This patriarchal system is what is disempowering women, constructing them as materially reliant on men, and expecting material compensation for sexual activities. Brouard and Crewe (2012) make the following observation:

What emerges is a fascinating set of ideas around gender, patriarchy and socio-economic inequality. It seems that because patriarchy allows men to be better educated, more employable and socially and culturally empowered to take charge of money

and property, and because women are expected to be dependent, reproductive and reliant on men for status and power, conditions are created for sugar daddies to emerge. In other words, if there was greater equality between men and women, and patriarchal entitlements were denied men, young girls would not need to seek out older men for affirmation and financial security, whether this was, albeit obliquely, culturally endorsed or not. (p. 53)

This discussion of unmarried, age-disparate relationships highlights added complexities on child marriage in South Africa and more generally. A simplistic focus on girls *in marriages* allow us to lose sight of the many girls in informal relationships that are facing many of the same negative consequences. It shows how patriarchal constructs of men, women and intimate relationships create the opportunity for exploitation of girls – be they married or not. Once again it emphasises the importance of engaging with the social and gender norms that underlie these harmful relationships. Engaging the way South Africans think about love, sex, relationships and gender equality is needed in order to address the root causes of not only child marriage, but other forms of intimate relationships in which girls are exploited.

## CONCLUSION

Child marriage has been receiving increasing attention internationally, with many treaties, conventions, laws, movements and organisations focused on eradicating the practice. This is needed, for child marriage violates children's rights on many levels, with girl children being especially affected. However, such a rights-based approach can often fail to adequately engage with the underlying drivers of child marriage. Many countries have attempted to end the practice through legislative means but have failed to do so. In South Africa, this is also the case. Contradictory and inadequate legislation has resulted in loopholes that actually allow the practice to legally continue. Yet,



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even if these loopholes are addressed and uniform legislation is drafted and implemented, will it lead to an end to child marriage? As the discussion of three particular dilemmas has unpacked, this is highly unlikely. A solely punitive approach to ending child marriage is unable to address the gender and social norms that drive child marriage. People do not change their beliefs and norms because of new laws. As long as patriarchal constructions of masculinity, femininity, and intimate relationships continue unopposed, child marriage will continue. It may be hidden (for example, with marriages only formally registered once the girl turns 18 years) or take new forms (such as 'modern' *ukuthwala*), but it will not end, for leaders, parents, guardians and girls themselves will continue to believe that girl children are a commodity that can be bartered.

The complex dilemmas surrounding child marriage in South Africa point to the fact that the need is not simply to end child marriage. We need to transform how South African societies value women and girls, but also men and boys, and what is considered normal and acceptable within intimate relationships. A legislative response will, therefore, never be comprehensive enough. But neither is a simplistic focus only on child marriage. What about other practices and relationships that harm and exploit girl children but have nevertheless become 'normal' in South African society? As long as key patriarchal beliefs continue to flourish uncontested, child marriage – as well as other practices that harm and exploit girl children – will continue.

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## CHAPTER 8

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